

ANNEX

COVID-19

EXISTING JURISDICTION AND AUTHORITIES

The federal government has identified pressing concerns with (1) the procurement of medical supplies; and, (2) food supply chain security, that precipitate consideration of the *Emergencies Act*.

The Government of Saskatchewan advocates that existing jurisdiction and regulatory authorities, in concert with federal-provincial-territorial (FPT) coordination, provide the most appropriate and effective means to address these issues.

1) OVERARCHING RESPONSE TO COVID-19

a. Jurisdiction and Authority

- In Saskatchewan, the *Public Health Act, 1994* contains provisions to address serious public health threats such as COVID-19. Orders have been issued under this Act and have been effective in ensuring compliance with various public health measures.
- The *Public Health Act, 1994* allows the Minister, or through delegation of authority the Chief Medical Health Officer, to issue orders in a timely manner and in response to the unfolding events in the province.
- As we deal with this serious public health threat, it is important that we provide certainty to Saskatchewan residents and make every effort to minimize confusion by continuing with provincial orders of this type.

b. Other Considerations

- There are a variety of intergovernmental processes underway in the response to COVID-19. Some of this engagement occurs at multilateral tables, while others are bilateral. These activities demonstrate a commitment by jurisdictions to work collaboratively. Examples include:
 - *FPT Ministers/Deputy Ministers of Health* – regular engagement and cooperation on how best to respond to COVID-19. For example, Ministers of Health agreed to an allocation formula for personal protective equipment (PPE) pursuant to the national procurement initiative).
 - *FPT Special Advisory Committee* – comprised of the Chief Medical Health Officers from all provinces and territories (PTs), and Canada's Chief Public Health Officer, this group provides leadership and guidance on critical public health measures.
 - *Provincial Discussions* – Saskatchewan officials are working closely with Indigenous Services Canada, the Northern Inter-Tribal Health Authority (NITHA) and the Saskatchewan Health Authority on how best to meet the needs of First Nations and Métis peoples.

- *Existing Agreements* – there are existing agreements that facilitate cooperation among jurisdictions during emergencies. For example, the FPT Memorandum of Understanding (MOU) on the Provision of Mutual Aid in Relation to Health Resources During an Emergency Affecting the Health of the Public. The MOU establishes a framework for jurisdictions to provide and receive human and material health resources, recognizing the unique and complex health care delivery structures and health professional regulatory environment in each PT.

2) PROCUREMENT OF MEDICAL SUPPLIES

a. Jurisdiction and Authority

- Saskatchewan’s *Emergency Planning Act* gives considerable powers to the provincial government, exercised by the minister under the Act, who is the Premier.
 - Section 18(1)(g) gives the Minister the power to “provide for the restoration of essential facilities and the distribution of essential supplies”.
 - Section 18(1)(l) gives the Minister the power to “procure or fix prices for food, clothing, fuel, equipment, medical supplies or other essential supplies and the use of any property, services, resources or equipment within any part of Saskatchewan for the duration of the state of emergency”.
- Provincial law provides the necessary authority to address procurement issues, in coordination with other jurisdictions.

b. Other Considerations

- Access to PPE is an ongoing concern for all PTs, but considerable collective action is being undertaken.
- It is unclear what additional support the *Emergencies Act* might offer in procurement and coordination that has not been achieved through existing mechanisms. PTs are already sharing resources between regions, to correspond with surges and peaks.
- PPE is a particular concern in First Nation communities, especially Northern and isolated communities. Many First Nations leaders are drawing attention to the need for on-reserve access to PPE and potential food security issues. This is an area where improved coordination and communication (in particular with Indigenous Services Canada) would be beneficial.

3) FOOD SUPPLY CHAIN SECURITY

Labour

a. Jurisdiction and Authority

- The federal government’s labour jurisdiction is limited to industries under federal jurisdiction (e.g., inter-provincial transportation and communications, banking, navigation and shipping, aeronautics and other specifically federal matters).

- Provincial labour laws apply to food processing plants, and wholesale and retail food stores. While some companies may have a national presence (e.g., Safeway, Sobeys and their wholesale suppliers), the federal government cannot regulate their labour relations.
- The Province has the ability to regulate these industries and declare them vital, if necessary.
 - Section 18(1)(g) of the *Emergency Planning Act* provides that the Minister can make orders to “provide for the restoration of essential facilities and the distribution of essential supplies.”
 - Section 18(1)(h) gives the Minister the power to regulate and co-ordinate essential services in any part of Saskatchewan.
 - Section 18(1)(m) provides that the Minister can issue orders to “conscript person needed to meet an emergency.”
- These provisions, taken together, give the Minister the power to declare that certain industries are essential services and to direct that they continue to operate.

b. Other Considerations

- In the case of inter-provincial mobility, jurisdictions may need to consider occupational licensing criteria for regulated workers (PTs set occupational standards and issue licenses/certifications).

Inputs

a. Jurisdiction and Authority

- By invoking the *Emergency Planning Act*, the Premier has the ability to direct manufacturing plants to produce needed supplies.
 - Section 18(1)(g) gives the Minister the power to “provide for the restoration of essential facilities and the distribution of essential supplies”.

b. Other Considerations

- Many producers and other provincial entities have voluntarily shifted operations to address COVID-19, including changing their primary products to a product that will help combat the pandemic.
- The SaskBuilds Single Procurement Service is serving as a central point of contact and coordination within Saskatchewan. There have already been a high number of submissions by provincial entities.

Transportation

a. Jurisdiction and Authority

- The *Emergency Planning Act* gives the Minister the power to make orders “to provide for the restoration of essential facilities and the distribution of essential supplies” (s. 18(1)(g)), which would likely give the Minister the power to regulate trucking for the distribution of essential supplies, such as medical supplies or food.
- Similar, the federal *Emergencies Act*, if invoked, would authorize the federal Cabinet to regulate “the distribution and availability of essential goods, services and resources” (s. 8(1)(e)).
- It is not apparent how the federal power would be of greater assistance with respect to trucking within the province, compared to the provincial power.
- The federal government has been able to use existing provisions under the *Aeronautics Act*, the *Canada Marine Act*, the *Railway Safety Act*, and the *Canada Shipping Act, 2001* to regulate the transportation system.

b. Other Considerations

- There do not appear to be gaps in authority at this point. However, additional clarity at the Canada-US border could be beneficial. More focus on ensuring trucks and drivers can cross the border is a higher priority than any considerations under the *Emergencies Act*.
- Coordination is critical in this sector, given how intricate and integrated the system is today.
- There is considerable risk of disrupting the system if Orders were made without taking an end to end supply chain perspective (i.e., the requirement to align the input and output delivery system with any requirements made of manufacturers).